

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 753 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

NAVINBHAI VITHALDAS CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 753 of 2004
MR YOGESH S LAKHANI for Petitioner No. 1
MR VM PANCHOLI APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 09/08/2004

ORAL JUDGEMENT

1. Rule. Mr. VM Pancholi, learned APP appears and waives service of notice of rule on behalf of the respondent - State.

2. By means of filing this petition under Article 226 of the Constitution of India, the petitioner who is an Executive Editor of Sandesh Daily newspaper, Vadodara, has prayed to issue an appropriate writ of certiorari or

any other appropriate writ order or direction directing the remarks against the petitioner as editor "Sandesh" to be expunged made in paragraph -3 of the order dated 15.7.2004 passed by learned Additional Sessions Judge, Vadodara in Criminal Misc. Application No.706 of 2004.

3. The petitioner is the Executive Editor of "Sandesh" daily newspaper, Vadodara. One Dineshchandra V. Patel has filed a complaint registered vide CR No. DCB.I-20/2004 with DCB Police Station, Vadodara against four persons making allegations constituting offences punishable under sections 409, 420, 467 and 120B of the IPC on the accusation that the general public is cheated by forging the documents and particularly the mark-sheet of 12th standard by making alteration in such marks with the help of computer and accordingly they have committed offences as alleged.

4. One of the accused Ajaybhai Dave filed application for anticipatory bail being Criminal Misc. Application No.706 of 2004 before the learned Additional Sessions Judge, Vadodara. In the said application inter alia it is alleged that he is running a news channel known as "Sayaji Samachar" and he has given certain news about some of the officers happened to be the relative of the present petitioner, he has played major role in getting the said complaint lodged against him. The learned Additional Sessions Judge, Vadodara by his judgment and order dated 15.7.2004 has been pleased to grant anticipatory bail to Ajaybhai Dave and observed that he has reason to believe certain facts. One of the fact mentioned in paragraph 7 (3) at page 20 of the compilation of the petition reads as under:

"The present applicant who is publishing news in the news channel run by him which is popularly known as Sayaji Samachar News Channel in Vadodara which has broadcasted the news of the collusion of the officers of taking insurance and has also shown therein the residential houses of those officers and who happens to be the relative (Vevai) of the editor of Sandesh. The editor of Sandesh joining hands with police to take revenge got the present complaint filed against the applicant and police also would like to proceed with such feeling of taking revenge."

This remarks made by the learned Additional Sessions Judge in his judgment has given rise to the present proceedings seeking to expunge the said remarks.

5. Mr. Y.S. Lakhani, learned advocate of the petitioner, has submitted that the observations which were made by the learned Additional Sessions Judge were not at all necessary and the petitioner has nothing to do with the entire episode of filing of such a complaint, the allegations made against the accused on their affair about the allegations made in it. It is also submitted by him that the petitioner was never given an opportunity of hearing before passing such observations which are in the nature of making an allegation against the petitioner and which are published in the newspaper. He also submitted that such remarks made by the learned Judge are required to be expunged in the interest of justice. If such remarks are expunged no prejudice is going to be caused to either of the party to the complaint or the prosecution. Under these circumstances, he prayed that appropriate orders expunging such remarks in paragraph 7 (3) of the said order may kindly be made in the interest of justice and the petition may be allowed.

6. Mr. VM Pancholi, learned APP has submitted that it is true that the petitioner is not given an opportunity of hearing while passing the remarks against him and thereby principle of natural justice is violated. He also candidly admitted that the learned Additional Sessions Judge has passed the remarks merely relying on the averment made in the bail application without it being tested and there was no such material available with the investigating officer during the course of investigation against the present petitioner which he has verified from Rameshbhai Chimanlal, Police Constable of Task Force of Vadodara who is personally present in court. Therefore, according to Mr. Pancholi, these remarks are uncalled for and deserve to be expunged. He therefore urged to pass appropriate orders.

7. I have considered the submissions made by Mr. Lakhani, learned advocate of the petitioner and Mr. Pancholi, learned APP for respondent - State. I have perused the averments made in the petition as well as the FIR which is registered vide CR No.DCB.I-20/2004 with DCB Police Station, Vadodara for commission of the alleged offences under sections 409, 420, 467 and 120-B of IPC against the persons named therein and the order dated 15.7.2004 rendered in Criminal Misc. Application No.706 of 2004 by the learned Additional Sessions Judge, Vadodara.

8. One Dineshbhai Patel has filed complaint for commission of the alleged offence under sections 409, 420, 467 and 120-B of IPC against four persons which came

to be registered vide CR No.DCB.I-20/2004 with DCB Police station, Vadodara. Out of four accused, one Ajaybhai Dave filed Criminal Misc. Application No.706 of 2004 for anticipatory bail before the learned Additional Sessions Judge, Vadodara. In the said application he inter alia alleged that he is running a news channel known as Sayaji Samachar and he has given certain news about some of the officers taking insurance and one of such officers happened to be the relative of the present petitioner and he has played major role in getting the said complaint lodged against him. It appears from the record that the learned Additional Sessions Judge after examining the police investigation papers has passed the order granting anticipatory bail in favour of Ajaybhai Dave. While granting anticipatory bail, learned Additional Sessions Judge in para 7 (3) of the order made unwarranted remarks against the present petitioner which has already been referred by this Court in earlier paragraphs of this judgment.

9. There is no manner of doubt that so far as the decision of bail application is concerned, the court has to consider the relevant materiel placed before it collected by the investigating officer during the course of investigation and not on the basis of the averments made in the bail application. In instant case, as submitted by Mr. Pancholi, from the instructions received from Rameshbhai Chimanlal, a Police Constable of Task Force, Vadodara, who is personally present before this court, that during the police investigation no such fact has been divulged against the present petitioner, nor at his instance complaint was filed. Therefore, this court fails to understand how the learned Additional Sessions Judge has passed such remarks in para 7 (3) of his order. It may be noted that the petitioner is an Executive Editor of "Sandesh" Daily newspaper, Vadodara. He has nothing to do with either the complainant or allegations made in the complaint or any of the accused persons. The petitioner also cannot have any grievance against such an order as the petitioner is in no way concerned with the issue in question. However, so far as the impugned remarks are concerned, the petitioner was shocked and surprised when he read in the newspaper "Gujarat Samachar" on 18.7.2004 that certain observations are made by the learned Judge while granting anticipatory bail to the said accused that the complaint in question was got filed at the instance of the petitioner. It may also be noted that in instant case uncalled for and unwarranted remarks which cast stigma are passed against a person and that too without giving an opportunity of hearing to him. When the petitioner is a reputed person

and an Executive Editor of "Sandesh" Daily newspaper naturally his feelings must have been hurt on reading the said remarks in "Gujarat Samachar" daily newspaper. Therefore, the learned Additional Sessions Judge has committed grave error by passing the remarks against the petitioner which were uncalled for and unwarranted. Therefore, according to this court, the learned Additional Sessions Judge has misdirected himself by merely relying upon the averments made in the memo of application passed the remarks in paragraph 7 (3) of the order which is impugned in this petition which was not at all called for which has tarnished the image of the petitioner in the society, and therefore according to this court as such remarks are unwarranted and uncalled for, deserve to be expunged in exercise of powers under Article 226 of the Constitution of India.

10. Seen in the above context, this petition deserves to be allowed by accepting the prayer made in the petition by granting the petition and consequently expunging the remarks.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned remarks made in para 7 (3) of the judgment dated 15.7.2004 passed by learned Additional Sessions Judge, Vadodara in Criminal Misc. Application No.706 of 2004 against the petitioner stands expunged. Rule is made absolute.

(A.M. Kapadia, J.)

(karan)